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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,933	08/13/2001	Pierre Leroy	032751-066	6916

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EXAMINER	
PRIEBE, SCOTT DAVID	
ART UNIT	PAPER NUMBER
1632	

DATE MAILED: 03/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/927,933	LEROY ET AL.	
	Examiner	Art Unit	
	Scott D. Priebe	1632	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☒ The proposed amendment(s) will not be entered because:

   (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☒ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☐ For purposes of Appeal, the proposed amendment(s) a)☒ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *40,41,43,44 and 46-60*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☒ Other: *See Continuation Sheet*

Scott D. Priebe

Scott D. Priebe
Primary Examiner
Art Unit: 1632

Continuation of 2. NOTE: The proposed amendment to claim 40 would require rejoinder of withdrawn claim 42, which would require new consideration under 35 USC 112. The proposed amendment to claim 44 raises the issue of new matter with respect to modifying both heavy and light chains with the CD4 domains. Claim 55 was not copied properly, and introduces new matter; the numbers should be 10 to the fourth and fourteenth power, respectively, not 104 and 1014 as recited. Proposed claim 60 raises the issue of new matter with respect to the immunopotentiating substance being anything but angiogenin.

Continuation of 5. does NOT place the application in condition for allowance because: the arguments are either directed to the proposed amendments, which have not been entered, or are not persuasive. With respect to the introduction of new matter into pending claim 60, the issue is not whether applicant was in possession of the single species wherein a gamma 3 fragment of the 2F5 monclonal antibody was fused to the extracellular domains of CD4 and human angiogenin, at each end, but rather whether the specification describes a genus where the antibody is fused to both a generic toxic substance and generic immunopotentiating substance. Except for this single disclosed species, the fusion of the antibody to a generic toxic substance or immunopotentiating substance is referred to only in the alternative. When original claims 20 and 21 are read in light of the specification, it is unclear why one of skill in the art would make the distinction urged by applicant. If one interprets original claim 21 as suggesting the fusion of an immunopotentiating substance (claim 20) and one of the recited toxic substances of claim 21, then one would also interpret it to mean the fusion of a generic toxic substance (claim 20) and one of the toxic substances listed in claim 21. There is no embodiment or species described in the specification where two different toxic substances are fused to the same antibody. Thus, one would have interpreted claim 21 as reciting the choices for the toxic substance of claim 20. With respect to the issue of whether Kolls meets the limitation of the rejected claims, immune suppression is a natural physiological process, and as such can be strengthened or promoted.

Continuation of 10. Other: The information disclosure statement filed 3/8/04 fails to comply with 37 CFR 1.97(d) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.